



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

MAR 23 2006

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

CA

IN THE MATTER OF THE APPLICATION OF
WILLOW VALLEY WATER COMPANY, INC.
FOR AN EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01732A-05-0532

DECISION NO. 68610

OPINION AND ORDER

DATE OF HEARING:

February 1, 2006

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Amy Bjelland

APPEARANCES:

Mr. William P. Sullivan, CURTIS, GOODWIN,
SULLIVAN, UDALL & SCHWAB, P.L.C., on behalf
of Willow Valley Water Company, Inc.; and

Mr. David M. Ronald, Staff Attorney, Legal Division,
on behalf of the Arizona Corporation Commission's
Utilities Division.

BY THE COMMISSION:

On July 26, 2005, Willow Valley Water Company, Inc. ("Willow Valley" or "Applicant") filed an application for an extension of its Certificate of Convenience and Necessity ("Certificate" or "CC&N") with the Arizona Corporation Commission ("Commission") to provide public water utility service to various parts of Mohave County, Arizona.

On August 23, 2005, the Commission's Utilities Division ("Staff") issued a letter of insufficiency pursuant to A.A.C. R14-2-411(C).

On October 12, 2005, Applicant docketed its Filing of Supplemental Information.

On November 10, 2005, Staff issued notice that the application had met the sufficiency requirements of A.A.C. R14-2-411(C).

On November 17, 2005, by Procedural Order, a hearing was scheduled for February 1, 2006, and other dates were set for publication of notice and procedural filing by parties to the proceeding.

On this date, Applicant filed its Notice of Filing Public Service Franchise.

1 On November 30, 2005, the Applicant filed certification that public notice had been provided
2 in accordance with the Commission's Procedural Order.

3 On January 10, 2006, Staff filed its Staff Report recommending approval of the application
4 with conditions.

5 On February 1, 2006, a full public hearing was convened before a duly authorized
6 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Applicant and
7 Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under
8 advisement pending submission of a Recommended Opinion and Order.

9 * * * * *

10 Having considered the entire record herein and being fully advised in the premises, the
11 Commission finds, concludes, and orders that:

12 **FINDINGS OF FACT**

13 1. Pursuant to authority granted by the Commission, Willow Valley is an Arizona
14 corporation that provides water utility service to 1,415 customers in portions of Mohave County,
15 Arizona pursuant to Decision No. 32436 (August 23, 1960). Willow Valley is a wholly owned
16 subsidiary of West Maricopa Combine, Inc., and according to Staff has no outstanding Commission
17 compliance issues.

18 2. On July 26, 2005, Willow Valley filed an application for extension of its existing
19 CC&N with the Commission to provide public water utility service to various parts of Mohave
20 County, Arizona. The proposed extension area includes approximately 48.53 acres of accretion
21 lands¹ in the area of Mohave County bordering the Fort Mohave Indian Reservation and the Colorado
22 River. From the time of its certification, Willow Valley believed that its CC&N abutted the Colorado
23 River and it has met all service requests within the proposed extension area. However, as stated in its
24 application, Willow Valley "recently became aware that the Extension Area was not recognized as
25 lands existing outside the bed and banks of the Colorado River at the time Willow Valley received its
26 certificate . . . and that the lands are, therefore, not included within the legal description contained in
27

28 ¹ These are lands that gradually accumulate as alluvium and are added to land situated on the bank of the Colorado River or deposited due to the permanent shifting of the River.

1 Decision No. 32436.”

2 3. On August 23, 2005, Staff issued an insufficiency letter.

3 4. On October 12, 2005, Applicant docketed its Filing of Supplemental Information.

4 5. On November 10, 2005, Staff issued its sufficiency letter.

5 6. On November 17, 2005, by Procedural Order, a hearing was scheduled for February 1,
6 2006, and other dates were set for publication of notice and procedural filing by parties to the
7 proceeding. On this date, Applicant filed its Notice of Filing Public Service Franchise.

8 7. On November 30, 2005, the Applicant filed certification that public notice had been
9 provided in accordance with the Commission’s Procedural Order.

10 8. On January 10, 2006, Staff filed its Staff Report recommending approval of the
11 application with conditions. The Staff Report was revised without objection at hearing to make a
12 technical correction and include a due process provision in the staff recommendation for a condition
13 requisite for approval.

14 9. On February 1, 2006, a full public hearing was convened before a duly authorized
15 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Applicant and
16 Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under
17 advisement pending submission of a Recommended Opinion and Order.

18 **Water System**

19 10. Staff stated that Willow Valley has three water systems; Cimarron Lake System
20 (Public Water System (“PWS”) No. 08-129), the Unit 1 System (PWS No. 08-034, and the King
21 Street System (PWS No. 08-040). The King Street System and the Unit 1 System are interconnected
22 and will serve the CC&N extension area. These two systems include four wells, which have a total
23 production capacity of 1,240 gallons per minute (“gpm”), 293,000 gallons of storage capacity,
24 booster pumps, pressure tanks, and a distribution system serving 1,415 connections as of June 2005.
25 Two wells serve customers and two are on standby. The two wells in use have a combined capacity
26 of 900 gpm. Staff stated that, based on historical growth rates, it is anticipated that the existing
27 service area would have approximately 1,475 total customers at the end of five years. Willow Valley
28 has predicted an additional 24 new lots for the proposed CC&N extension at the end of five years.

1 Staff projected that the existing 900 gpm of production and 293,000 gallons of storage can serve
2 approximately 2,500 connections. Staff concluded that the existing system has adequate production
3 and storage capacity to serve the existing and proposed CC&N extension area and can reasonably be
4 expected to develop additional storage and production as required in the future.

5 11. Willow Valley plans to finance the required utility facilities through advances in aid of
6 construction, which generally take the form of Main Extension Agreements ("MXAs"). MXAs
7 between water utilities and private parties are governed by A.A.C. R14-2-406, and result in developer
8 construction of the facilities, conveyance of the facilities to the utility company, and a refund by the
9 water utility of ten percent of the annual revenue associated with the line to the developer for a period
10 of ten years. Staff recommended that Willow Valley filed with Docket Control, as a compliance
11 item, a Notice of Filing indicating Willow Valley has submitted for Staff review and approval a copy
12 of the fully executed MXAs for water facilities for the extension area within 365 days of a decision in
13 this case.

14 12. Willow Valley received a request to serve the extension area from the developer of
15 Willow Valley Estates 20, McKellips Land Corporation. Mr. Joseph John Mihlik, President and
16 Chairman of Willow Valley, testified that the developer projects approximately 24 lots will be
17 occupied within two years.

18 13. Willow Valley proposed to provide water utility service to the extension area under its
19 authorized rates and charges. Mr. Mihlik testified that the extension area is contiguous to Willow
20 Valley's current CC&N area and that the closest alternate water utility is located two miles away
21 from the CC&N extension area. He stated that Willow Valley is current on its property taxes.

22 14. Staff stated that the Arizona Department of Environmental Quality ("ADEQ") has
23 determined that this system is currently delivering water that meets ADEQ water quality standards.

24 15. Willow Valley is not located in an Active Management Area and therefore is not
25 subject to Arizona Department of Water Resources ("ADWR") reporting and conservation rules.
26 Staff stated that Willow Valley has not received a copy of the Developer's Letter of Adequate Water
27 Supply for the CC&N extension area from ADWR. Therefore, Staff recommended that Willow
28 Valley be ordered to file with Docket Control, as a compliance item, copies of the Developer's

1 Adequate Water Supply letter, stating that there is adequate water, no later than one year after a
2 decision in this docket.

3 16. Rules established by the United States Environmental Protection Agency ("EPA")
4 require the maximum contaminant level ("MCL") for arsenic in potable water to be reduced from 50
5 parts per billion ("ppb") to 10 ppb, effective January 23, 2006. Staff stated that the most recent lab
6 analysis of the wells for the three water systems indicates that the arsenic levels range from 2.2 to 7
7 ppb. Based on these arsenic concentrations, Willow Valley is in compliance with the new arsenic
8 MCL.

9 17. Staff stated that a Curtailment Plan Tariff ("CPT") is an effective tool to allow a water
10 company to manage resources during periods of water shortages due to pump breakdowns, droughts,
11 or other unforeseeable events. Willow Valley has a curtailment tariff on file with the Utilities
12 Division.

13 18. Arizona law requires every applicant for a CC&N or CC&N extension to submit
14 evidence to the Commission that the applicant has received consent, franchise or permit from the
15 proper authority prior to being granted the CC&N or CC&N extension. Willow Valley is located in
16 an unincorporated part of Mohave County, and has docketed its franchise agreement with Mohave
17 County.

18 19. Because an allowance for the property tax expense of Willow Valley is included in the
19 Company's rates and will be collected from its customers, the Commission seeks assurances from the
20 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
21 authority. It has come to the Commission's attention that a number of water companies have been
22 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
23 some for as many as twenty years. It is reasonable, therefore, that as a preventative measure Willow
24 Valley annually file, as part of its annual report, an affidavit with the Utilities Division attesting that
25 the company is current in paying its property taxes in Arizona.

26 **Staff's Recommendations**

27 20. Staff recommended that the Commission approve the Willow Valley application for a
28 CC&N extension within portions of Mohave County, Arizona, to provide water service, subject to

1 compliance with the following conditions:

2 (a) That Willow Valley charge its authorized rates and charges in the extension
3 area.

4 (b) That Willow Valley file with Docket Control, as a compliance item, a Notice
5 of Filing indicating Willow Valley has submitted for Staff review and approval a copy of the fully
6 executed main extension agreements for water facilities for the extension area within 365 days of a
7 decision in this case.

8 (c) That Willow Valley obtain and file with Docket Control, as a compliance item,
9 copies of the Developer's Letter of Adequate Water Supply, stating that there is adequate water, no
10 later than one year after a decision in this docket.

11 21. Staff further recommended that the Commission's Decision granting the requested
12 CC&N extension to Willow Valley be considered null and void after due process should Willow
13 Valley fail to meet Condition Nos. (b) and (c) listed above within the time specified.

14 **CONCLUSIONS OF LAW**

15 1. Willow Valley is a public service corporation within the meaning of Article XV of the
16 Arizona Constitution and A.R.S. §§ 40-281 and 40-282 *et seq.*

17 2. The Commission has jurisdiction over Willow Valley and the subject matter of the
18 application.

19 3. Notice of the application was provided in accordance with law.

20 4. There is a public need and necessity for water utility service in the proposed extension
21 area.

22 5. Willow Valley is a fit and proper entity to receive a water CC&N extension to include
23 the service area more fully described in Exhibit A attached hereto, subject to compliance with the
24 conditions set forth above.

25 **ORDER**

26 IT IS THEREFORE ORDERED that the application of Willow Valley Water Company, Inc.
27 for an extension of its existing water Certificate of Convenience and Necessity to include the area
28 described in Exhibit A attached hereto and incorporated herein by reference be, and is hereby

1 approved, subject to the conditions more fully described herein.

2 IT IS FURTHER ORDERED that Willow Valley Water Company, Inc. charge its authorized
3 rates and charges in the extension area.

4 IT IS FURTHER ORDERED that should Willow Valley Water Company, Inc. fail to meet
5 the conditions enumerated in the following two Ordering Paragraphs, the Commission's Decision
6 granting the requested Certificate extension to Willow Valley Water Company, Inc. shall be
7 considered null and void after due process.

8 IT IS FURTHER ORDERED that Willow Valley Water Company, Inc. file with Docket
9 Control, as a compliance item in this docket, a Notice of Filing indicating Willow Valley Water
10 Company, Inc. has submitted for Staff review and approval a copy of the fully executed main
11 extension agreements for water facilities for the extension area within 365 days of a decision in this
12 case.

13 IT IS FURTHER ORDERED that Willow Valley Water Company, Inc. obtain and file with
14 Docket Control, as a compliance item, copies of the Developer's Letter of Adequate Water Supply,
15 stating that there is adequate water, no later than one year after a decision in this docket.

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IT IS FURTHER ORDERED that Willow Valley Water Company, Inc. shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

Jeffrey McHatch-Meller
CHAIRMAN

Will Miller

COMMISSIONER

COMMISSIONER

Laurel Cream
COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 23rd day of March, 2006.

Brian C. McNeil
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

AB:mj

1 SERVICE LIST FOR:

WILLOW VALLEY WATER COMPANY, INC.

2 DOCKET NO.:

W-01732A-05-0532

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4 Michael A. Curtis

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REVISED EXHIBIT "A"
(consisting of Parcels A, B, and C)
Legal Description
Page 1 of 1

PARCEL "A":

All that portion of the abandoned channel of the Colorado River, as it existed immediately prior to re-channelization, that lies South of the North line of fractional Section 21, T18N, R22W, G. &S. R. B. &M., Mohave County, Arizona, and that lies East of the Easterly dredging right of way line of the present channel of the Colorado River, approximately described as follows:

COMMENCING at the Northeast Corner of said fractional Section 21;
thence S 76° 17' 28" W, along the North line of said fractional Section 21, 2796 feet more or less to the point of beginning, said point being a point on a meander line of the left descending bank of said abandoned channel;
thence S 42° 51' W 250 feet to a point;
thence S 57° 39' W 390 feet to a point;
thence S 78° 45' W 260 feet to a point;
thence S 60° 44' W 200 feet to a point;
thence S 65° 57' W 477 feet to a point;
thence S 39° 51' W 260 feet to a point;
thence S 45° 43' W 390 feet to a point on the Easterly dredging right of way line of said present channel;
thence Northerly along said right of way line, which is a curve to the right, having a tangent that bears N 02° 52' 39" E from the last described point, a radius of 7190.90 feet and a central angle of 6° 17' 40", 790 feet to a point on the North line of said fractional Section 21;
thence N 76° 17' 28" E along the North line of said fractional Section 21, 1778 feet to the true point of beginning. Containing 13.60 Acres more or less.

PARCEL "B":

All that portion of the abandoned channel of the Colorado River, as it existed immediately prior to re-channelization, that lies South of the North line and a Westerly prolongation thereof, of fractional Section 21, T18N, R22W, G. &S. R. B. &M., Mohave County, Arizona, and that is bounded on the East by the Easterly dredging right of way line of the present channel of the Colorado River and is bounded on the South and East by the left descending bank of the abandoned channel of the Colorado River as it existed immediately prior to dredging, and is bounded on the West by the left descending bank of the present normal-flow channel of the Colorado River, approximately described as follows:

COMMENCING at the Northeast Corner of said fractional Section 21;
thence S 76° 17' 28" W, along the North line of said fractional Section 21, 4574.36 feet to a point, said point being the intersection of the North line of said fractional Section 21 and said Easterly dredging right of way line of the present channel of the Colorado River and the Point of Beginning;
thence Southerly along said right of way line, which is a curve to the left having a tangent that bears S 09° 10' 19" W from the last described point, a radius of 7190.90 feet and a central angle of 6° 17' 40", 790 feet to a point, said point being a point on a meander line of the left descending bank of said abandoned channel;
thence along a meander line of said abandoned channel S 44° 59' W 579 feet to a point;

REVISED EXHIBIT "A"
(consisting of Parcels A, B, and C)

Legal Description

Page 2 of 2

thence along a meander line of said abandoned channel S 16° 00' W 418 feet to a point, said point being on a Westerly prolongation of the South riparian Section line of fractional Section 21 as established by the United States Bureau of Land Management and also being a point on a meander line of the left descending bank of the present normal-flow channel of the Colorado River;
 thence along said left bank of the present normal-flow channel N 01° 30' E 680 feet to a point;
 thence N 10° 02' E 200 feet to a point;
 thence N 01° 26' E 220 feet to a point;
 thence N 13° 29' E 410 feet to a point, said point being on a Westerly prolongation of the North line of said fractional Section 21;
 thence along the North line of said fractional Section 21 and a Westerly prolongation thereof N 76° 17' 28" E 480 feet to the true point of beginning. Containing 11.43 Acres more or less.

PARCEL "C":

All of that portion of the alluvium lands of the Colorado River lying West of and adjoining fractional Section 21, T18N, R22W, G. & S. R. B. & M., Mohave County, Arizona, bounded on the Northwest by the meander lines of the left descending bank of said River immediately prior to the re-channelization, bounded on the Northeast by the 1905 GLO Meander line, and bounded on the South by a line that is the South riparian section line and follows an existing line of occupation. Said boundaries being approximately described as follows:

Beginning at the South quarter corner of said Section 21;
 thence South 89° 50' 52" West, a distance of 540.84 feet more or less to the point of beginning, said point being the BLM Brass Cap Monument marking the Meander Corner on the South line of said Section 21;
 thence S 82° 18' 43" W 1512.93 feet to a 1 inch iron pipe tagged RLS 5576, said 1 inch iron pipe being on the Easterly prolongation of an existing fence;
 thence along said fence S 80° 24' 40" W 421.67 feet to a 1 inch iron pipe tagged RLS 5576, and the Westerly termination of said fence;
 thence continuing S 80° 24' 40" W 16 feet more or less to a point on the meander line of the left descending bank of the Colorado River immediately prior to the re-channelization, said point also being the most Southerly Corner of Parcel 2 of that certain Judgment filed January 30, 1976, at Pages 47-49 of Book 391 of Official Records of said Mohave County, Arizona;
 thence along said meander line N 16° 00' E 418 feet;
 thence N 44° 59' E 579 feet to a point on the Easterly dredging right of way line of the present channel, said point also being the most Southerly Corner of Parcel 1 of the before mentioned Judgment;
 thence N 45° 43' E 390 feet to a point on the 1905 GLO Meander line shown on the Plat as N 53° 00' W 21.40 chains;
 thence along said GLO Meander line S 53° 00' E 1387 feet, more or less, to the point of Beginning. Containing 23.5 acres more or less.